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2010 SEP 29 PM 3: 17

OFFICE OF GENERAL
COUNSEL

September 29, 2010

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2010 SEP 29 PM 2: 47
FEC MAIL CENTER

Christopher Hughey, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

MUR # 6386

Re: Complaint Against Steve Fincher for Congress

Dear Mr. Hughey:

On behalf of our client, Herron for Congress, we are writing to file a complaint, in accordance with the Federal Election Commission's rules, against Steve Fincher for Congress and Phyllis Patterson, as Treasurer, for blatantly violating the Federal Election Campaign Act of 1971, as amended (the "Act"), and the Commission's rules, by failing to report a bank loan to the campaign.

In summary, Mr. Fincher stated on his pre-primary report to the Commission that he had made a quarter million loan to himself from his own *personal* funds, on July 8, 2010. Yet, Mr. Fincher stated on his personal financial disclosure form for that period, filed under the Ethics in Government Act, that he had *no* personal financial assets. And the officer of a bank stated in a press account that the bank was the source of the loan reported to the Commission. The Fincher Campaign, however, did not report this bank loan at all on its filings with the FEC—a serious violation of the law.

1. Parties

Steve Fincher for Congress (the "Fincher Campaign"), the Respondent, is the authorized committee of Stephen Fincher, the Republican nominee for U.S. House of Representatives for the 8th Congressional District of Tennessee. The address of the Fincher Campaign is P.O. Box 11153, Jackson, TN 38308.

Herron for Congress, the Complainant, is the authorized committee of Roy Herron, the Democratic nominee for U.S. House of Representatives for the 8th Congressional District of Tennessee. The address of Herron for Congress is P.O. Box 5, Dresden, TN 38225.

2. **Factual Background**

On July 23, 2010, the Fincher Campaign filed with the Commission the Campaign's pre-primary election report, covering the period July 1, 2010 through July 16, 2010. That report disclosed a loan of \$250,000 made to the Campaign on July 8, 2010. The loan was reported on Line 13(a) as having been made or guaranteed personally by the candidate. On Schedule C to this report, the Campaign reported the loan source as being "Personal Funds," with no due date and no interest rate. (A copy of the relevant pages of that report is attached hereto as Exhibit A).

Mr. Fincher has filed two personal financial disclosure reports with the Clerk of the U.S. House, pursuant to the Ethics in Government Act of 1978. The first report was filed on October 29, 2009, covering calendar year 2009 up to September 29, 2009; and the second report was filed on May 17, 2010, covering January 1, 2009 through May 15, 2010. These reports showed *no* personal financial assets of Mr. Fincher, *at all*—no bank accounts, no stocks, no bonds, no certificates of deposit. The only asset of any kind disclosed was Mr. Fincher's farm. (The second report is attached hereto as Exhibit B).

Clearly, it seems impossible that Mr. Fincher had \$250,000 in cash available to loan to his campaign on July 8, 2010 yet had *no* personal funds at all, of any kind, at any time in 2010 through at least May 15. An Associated Press article on August 27, 2010 (attached hereto as Exhibit C) reported that "Warren Nunn, chairman of the Gates Banking and Trust Co., said his bank was the source of the loan to Fincher, a longtime customer. 'We did advance Stephen a loan,' Nunn said. . . . Nunn, who has given the Fincher campaign \$4,800, declined to say what kind of collateral Fincher put up for the loan" (emphasis added).

3. **Legal Violations**

Under the Act and the Commission's rules, any loan from a bank to a federal political committee must be publicly disclosed on the reports filed with the Commission on Schedule C, including the name of the bank, date and amount of the loan, interest rate, the collateral securing the loan; and submitted with Schedule C must be a certification from the bank and copy of the loan agreement with the bank. 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. §§104.3(d)(i) & (2).

The bank official stated publicly, and Mr. Fincher's financial disclosure reports suggest that, the source of the \$250,000 loan made to the Campaign on July 8, 2010 was not Mr. Fincher's personal funds, but rather the Gates Banking & Trust Company. If that

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is the case, then the Fincher Campaign has clearly violated the Act and the Commission's rules by failing to report the bank loan, failing to disclose the terms of that loan and failing to file a copy of the loan agreement with the bank.

Because the Fincher Campaign unlawfully failed to disclose the terms of the bank loan, including the nature and amount of any collateral for the loan, it is impossible to determine whether any collateral was in fact furnished as security for the loan. As noted, in the Associated Press article (Exhibit C hereto), the bank official, Mr. Nunn, declined to say if Mr. Fincher or his campaign put up any collateral.

If no collateral at all was furnished, then such failure would constitute an additional violation of the Act and the Commission's rules. Under the Act and the Commission's rules, direct contributions by corporations—including banks—to a candidate for federal office are strictly prohibited. 2 U.S.C. §441b(a). A legitimate loan to a campaign from a bank is exempt from this prohibition, but to be considered legitimate, a loan must be made on a "basis which assures repayment." 2 U.S.C. §431(8)(B)(viii). Under the Commission's rules, that means the loan must be secured by collateral owned by the candidate or campaign—either property or future contribution receipts—and that security interest must be "perfected" by a filing with the appropriate authority, in this case the Tennessee Secretary of State. 11 C.F.R. §§100.82(e)(1) & (2). The Herron Campaign has been unable to find any UCC security statement on file with the Tennessee Secretary of State indicating that the Gate Bank took any security interest in any collateral in respect of this loan.

If indeed the loan from Gate Bank was made without any security interest in collateral put up by Mr. Fincher or his campaign, then the Bank has made, and the Fincher Campaign accepted, a quarter million dollar illegal corporate contribution.

4. Conclusion

For the reasons set forth above, the Commission should find reason to believe that that Steve Fincher for Congress has violated the Act and the Commission's regulations, and conduct an investigation.

Respectfully submitted,



Joseph E. Sandler

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Christopher Hughey, Esq.
September 29, 2010
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Subscribed and sworn to before me this 29 day of September 2010.

Mary F. Vincent

Notary Public

MARY F. VINCENT
Notary Public, District of Columbia
My Commission Expires March 31, 2013

My commission expires: March 31, 2013

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Exhibit A

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FEC FORM 3

REPORT OF RECEIPTS AND DISBURSEMENTS

For An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) **USE FEC MAILING LABEL OR TYPE OR PRINT** Example: If typing, type over the lines

Steve Fincher for Congress

ADDRESS (number and street) PO Box 11153

Check if different than previously reported. (ACC) Jackson TN 38308

2. FEC IDENTIFICATION NUMBER CITY STATE ZIP CODE STATE DISTRICT

C00466854 IS THIS REPORT NEW (N) OR AMENDED (A) TN 08

4. TYPE OF REPORT (Choose One)

- (a) Quarterly Reports:
 April 15 Quarterly Report (Q1)
 July 15 Quarterly Report (Q2)
 October 15 Quarterly Report (Q3)
 January 31 Year-End Report (YE)
 Termination Report (TER)

(b) 12-Day PRE-Election Report for the:
 Primary (12P) General (12G) Runoff (12R)
 Contestion (12C) Special (12S)
Election on 08 05 2010 in the State of TN

(c) 30-Day POST-Election Report for the:
 General (30G) Runoff (30R) Special (30S)
Election on in the State of

5. Covering Period 07 01 2010 through 07 16 2010

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Phyllis Patterson

Signature of Treasurer Electronically Filed by Phyllis Patterson Date 07 23 2010

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C 437g.

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SUMMARY PAGE
of Receipts and Disbursements

FEC Form 3 (Revised 02/2003)

Write or Type Committee Name

Steve Fincher for Congress

Report Covering the Period: From:

MM	DD	YYYY
07	01	2010

 To:

MM	DD	YYYY
07	16	2010

	COLUMN A This Period	COLUMN B Election Cycle-to-Date
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (from Line 11(e)).....	22195.00	1262627.01
(b) Total Contribution Refunds (from Line 20(b)).....	200.00	29423.24
(c) Net Contributions (other than loans) (subtract Line 6(b) from Line 6(a)).....	21995.00	1233203.77
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17).....	257260.54	1066821.17
(b) Total Offsets to Operating Expenditures (from Line 14).....	0.00	15.00
(c) Net Operating Expenditures (subtract Line 7(b) from Line 7(a)).....	257260.54	1066806.17
8. Cash on Hand at Close of Reporting Period (from Line 27).....	421448.70	
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D).....	0.00	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D).....	250000.00	

For further information contact:

Federal Election Commission
999 E Street, NW
Washington, DC 20463
Toll Free 800-424-9530
Local 202-694-1100

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DETAILED SUMMARY PAGE
of Receipts

FEC Form 3 (Revised 12/2003)

3 / 27

Write or Type Committee Name
Steve Fincher for Congress

Report Covering the Period:

From:

MM 07

DD 01

YYYY 2010

To:

MM 07

DD 18

YYYY 2010

I RECEIPTS

COLUMN A
Total This Period

COLUMN B
Election Cycle-to-Date

11. CONTRIBUTIONS (other than loans) FROM:

(a) Individuals/Persons Other Than
Political Committees

(i) Itemized (use Schedule A).....

17150.00

1105473.14

(ii) Unitemized.....

5045.00

82112.17

(iii) TOTAL of contributions
from individuals..... ▶

22195.00

1187585.31

(b) Political Party Committees.....

0.00

0.00

(c) Other Political Committees
(such as PACS).....

0.00

75041.70

(d) The Candidate.....

0.00

0.00

(e) TOTAL CONTRIBUTIONS
(other than loans)

(add Lines 11(a)(iii), (b), (c), and (d))

22195.00

1262627.01

12. TRANSFERS FROM OTHER
AUTHORIZED COMMITTEES.....

0.00

0.00

13. LOANS

(a) Made or Guaranteed by the
Candidate.....

250000.00

250000.00

(b) All Other Loans.....

0.00

0.00

(c) TOTAL LOANS

(add Lines 13(a) and (b)).....

250000.00

250000.00

14. OFFSETS TO OPERATING
EXPENDITURES
(Refunds, Rebates, etc.).....

0.00

15.00

15. OTHER RECEIPTS
(Dividends, Interest, etc.).....

0.00

5051.10

16. TOTAL RECEIPTS (add Lines
11(e), 12, 13(c), 14, and 15)
(Carry Total to Line 24, page 4)..... ▶

272195.00

1517693.11

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DETAILED SUMMARY PAGE
of Disbursements

II. DISBURSEMENTS

COLUMN A
Total This Period

COLUMN B
Election Cycle-to-Date

17. OPERATING EXPENDITURES.....

257260.54

1066821.17

18. TRANSFERS TO OTHER
AUTHORIZED COMMITTEES.....

0.00

0.00

19. LOAN REPAYMENTS:

(a) Of Loans Made or Guaranteed
by the Candidate.....

0.00

0.00

(b) Of all Other Loans.....

0.00

0.00

(c) TOTAL LOAN REPAYMENTS
(add Lines 19(a) and (b)).....

0.00

0.00

20. REFUNDS OF CONTRIBUTIONS TO:

(a) Individuals/Persons Other
Than Political Committees.....

200.00

29423.24

(b) Political Party Committees.....

0.00

0.00

(c) Other Political Committees
(such as PACs).....

0.00

0.00

(d) TOTAL CONTRIBUTION REFUNDS
(add Lines 20(a), (b), and (c)).....

200.00

29423.24

21. OTHER DISBURSEMENTS.....

0.00

0.00

22. TOTAL DISBURSEMENTS
(add Lines 17, 18, 19(c), 20(d), and 21) ▶

257460.54

1096244.41

III. CASH SUMMARY

23. CASH ON HAND AT BEGINNING OF REPORTING PERIOD.....

406714.24

24. TOTAL RECEIPTS THIS PERIOD (from Line 16, pages).....

272195.00

25. SUBTOTAL (add Line 23 and Line 24).....

678909.24

26. TOTAL DISBURSEMENTS THIS PERIOD (from Line 22).....

257460.54

27. CASH ON HAND AT CLOSE OF REPORTING PERIOD
(subtract Line 26 from line 25).....

421448.70

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SCHEDULE C (FEC Form 3)

LOANS

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one) 13a
 18b

NAME OF COMMITTEE (In Full)
Steve Fincher for Congress

Transaction ID: LS00707.C2341

LOAN SOURCE Full Name (Last, First, Middle Initial)
Steve Fincher - [PERSONAL FUNDS]

Election:
 Primary 17
 General
 Other (specify) ▾

Mailing Address PO Box 11153

City Jackson State TN ZIP Code 38308-0119

Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
250000.00	0.00	250000.00

TERMS

Date Incurred	Date Due	Interest Rate	Secured:
MM DD YYYY 07 08 2010	20100707	.0000 % (apr)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

List All Endorsers or Guarantors (if any) to Loan Source

Full Name (Last, First, Middle Initial)	Name of Employer
Mailing Address	Occupation
City State ZIP Code	Amount Guaranteed Outstanding: []
Full Name (Last, First, Middle Initial)	Name of Employer
Mailing Address	Occupation
City State ZIP Code	Amount Guaranteed Outstanding: []
Full Name (Last, First, Middle Initial)	Name of Employer
Mailing Address	Occupation
City State ZIP Code	Amount Guaranteed Outstanding: []
Full Name (Last, First, Middle Initial)	Name of Employer
Mailing Address	Occupation
City State ZIP Code	Amount Guaranteed Outstanding: []

SUBTOTALS This Period This Page (optional)	▶	250000.00
TOTALS This Period (last page in this line only)	▶	250000.00
Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.		

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Exhibit B

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me

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me

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**UNITED STATES HOUSE OF REPRESENTATIVES
FINANCIAL DISCLOSURE STATEMENT**

Period covered: January 1, 2009 - May 15, 2010

FORM B
For use by candidates and new employees

Name: Stephen Lee Finkler Daytime Telephone: 731-676-3555

Filer Status	<input checked="" type="checkbox"/> Candidate for the House of Representatives	State: <u>TX</u> District: <u>14</u>	Date of Election: <u>6/5/20</u>	Check if Amendment <input type="checkbox"/>	A \$300 penalty shall be assessed against anybody who files more than 30 days late.
	<input type="checkbox"/> Not a candidate	Employing Office: _____			

In all sections, please type or print clearly in black ink.

PRELIMINARY INFORMATION - ANSWER EACH OF THESE QUESTIONS

I. Did you or your spouse have "unearned" income (e.g., salary or fees) of \$200 or more from any source in the reporting period? If yes, complete and attach Schedule I.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	II. Did you hold any reportable positions on or before the date of filing in the current calendar year or in the prior two years? If yes, complete and attach Schedule IV.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
II. Did you, your spouse, or a dependent child receive "unearned" income of more than \$200 in the reporting period or hold any reportable asset worth more than \$1,000 at the end of the period? If yes, complete and attach Schedule II.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	V. Did you have any reportable agreement or arrangement with an outside entity? If yes, complete and attach Schedule V.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
III. Did you, your spouse, or a dependent child have any reportable liability (more than \$10,000) during the reporting period? If yes, complete and attach Schedule III.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	VI. Did you receive compensation of more than \$5,000 from a single source in the two prior years? If yes, complete and attach Schedule VI.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Each question in this part must be answered and the appropriate schedule attached for each "Yes" response.

EXCLUSION OF SPOUSE, DEPENDENT, OR TRUST INFORMATION - ANSWER EACH OF THESE QUESTIONS

TRUSTS—Details regarding "Qualified Blind Trusts" approved by the Committee on Standards of Official Conduct and certain other "excepted trusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or a dependent child? (See Instructions, page 6.)

Yes No

EXEMPTION—Have you excluded from this report any other assets, "unearned" income, transactions, or liabilities of a spouse or dependent child because they meet all three tests for exemption? Do not answer "yes" unless you have first consulted with the Committee on Standards of Official Conduct.

Yes No


MAY 17 2010

(Circle Use Only)

Exhibit C

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Dem lawyer questions Fincher's disclosure to House

BEN EVANS, Associated Press Writers, ERIK SCHELZIG, Associated Press Writers

(Aug 27, 2010)

NASHVILLE, Tenn. (AP) — A prominent Democratic lawyer is asking federal prosecutors to investigate whether Republican congressional candidate Stephen Fincher omitted debts and assets in financial disclosures maintained by the U.S. House.

The Fincher campaign dismissed the allegations brought by Covington attorney J. Houston Gordon, a former state Democratic Party chairman, as a political stunt on behalf of Roy Herron, the Democratic nominee in the open 8th District race in northwestern Tennessee.

"Stephen Fincher filled out all required disclosure forms honestly and in good faith," Paul Ciaramitaro, Fincher's deputy campaign manager, said in an e-mail. "Roy Herron's camp is using one of his political hatchet-men to gin up a sideshow."

Fincher in the disclosure statements said his only assets were about \$60,000 in farm income last year and another \$124,000 through May of this year. That led Gordon to question how Fincher could round up \$250,000 to lend his campaign in the closing weeks of the tumultuous GOP primary.

"Mr. Fincher indicated that he and his spouse have no liquid assets of any kind — no checking accounts, no savings accounts, no money market accounts, no stocks, no bonds," Gordon said in a letter sent this week to the U.S. attorney in Memphis.

"It seems somewhat improbable that Mr. Fincher can loan his campaign a quarter million dollars in July 2010 without having any money in any bank account," he said.

Warren Nunn, chairman of the Gates Banking and Trust Co., said his bank was the source of the loan to Fincher, a longtime customer.

"We did advance Stephen a loan," Nunn said. "Stephen's always handled his business satisfactorily, we've never had any problems. I wish we had more like him."

Nunn, who has given the Fincher campaign \$4,800, declined to say what kind of collateral Fincher put up for the loan, and the campaign didn't immediately respond to questions about the terms of the loan.

Melanie Sloan, executive director of the watchdog group Citizens for Responsibility and Ethics in Washington, said it is highly unusual that Fincher has reputed no assets.

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Candidates are required to report most types of income and assets, although personal homes and non-interest bearing checking accounts are excluded.

"It's impossible to know, but in modern life it would be unbelievably rare for somebody to have no accounts, not a single savings account," she said.

Herron's financial disclosure statement is far more detailed. Herron, who has also loaned his campaign \$250,000, disclosed \$564,021 in income from his Dresden law practice last year, plus another \$28,654 from his legislative work.

Herron also lists 27 assets and areas of income, including retirement and investment accounts, a rental home in Nashville and Herron Farms Inc.

Fincher's disclosures also don't list any liabilities, though Gordon in his letter cited filings with the Tennessee Department of State that show he co-signed for \$416,626 worth of loans in the last two years, and had another \$748,094 worth of secured debt outstanding in 2008.

The congressional disclosures allow candidates to exclude liabilities by businesses, and the state filings show that Fincher's debts — while in his personal name — include farm machines like tractors, plows and cutters.

The House ethics office, which oversees the disclosures, declined to comment about whether Fincher should have included the liabilities on the form.

Sloan, of the CREW watchdog group, said she doesn't see anything wrong with that part of Fincher's disclosure, saying the complaint looks more like a political gambit by Fincher's opponents.

"It's obviously for his business, and the rule says filers need not report liabilities of a business," she said. "He has a really good-faith argument that he filed it all correctly."

Even if there is a violation, she said, it's probably just a technical error that would almost certainly not be prosecuted or investigated by the House ethics committee.

"To have a prosecutable violation you have to have a willful, intentional failure to disclose," she said. "You have to be trying to hide something. I don't know what evidence they think they have of that."

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